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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 BARBARA BROUGHEL,

4 Plaintiff,

New York, N.Y.

5 v.

07 Civ. 7755 (GBD)

6 THE BATTERY CONSERVANCY,
7 WARRIE PRICE

8 Defendants.

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9
10 November 20, 2007
11 11:00 a.m.

12 Before:

13 HON. GEORGE B. DANIELS,

14 District Judge

15 APPEARANCES

16 THE LAW OFFICE OF BARBARA HOFFMAN

Attorneys for Plaintiff

17 BY: BARBARA HOFFMAN

18 MARGARET PFEIFFER

RITA CARRIER

SUSAN K. NASH

Attorneys for Defendants

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1 (Case called)

2 THE COURT: Good morning.

3 Let me just start with you, Ms. Hoffman. How far have
4 you gotten. I know you've sent letters with regard to wanting
5 to amend the complaint. What's the status at this point?

6 MS. HOFFMAN: I heard from counsel yesterday afternoon
7 that they had no objection to our serving the amended
8 complaint, and we have proceeded to do so, I hope with your
9 permission.

10 THE COURT: Have you had an opportunity to review and
11 discuss the proposed case management plan?

12 MS. HOFFMAN: Yes. We jointly have prepared one and
13 submitted it.

14 THE COURT: Did you change any of the dates, or did
15 you use the dates that I suggested?

16 MS. HOFFMAN: We advanced the dates by 120 days based
17 on contemplated motions.

18 THE COURT: OK.

19 MS. HOFFMAN: Ms. Pfeiffer, Ms. Carrier, and Ms. Nash,
20 have you seen the proposed amendment or know the nature of the
21 amendment and have no objection to the amendment.

22 MS. PFEIFFER: Yes, your Honor. That was agreed to in
23 our civil case scheduling order. We noticed that your Honor
24 seems to have adopted dates that we had submitted.

25 THE COURT: I already signed your order?

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1 MS. PFEIFFER: Well, I am not very good at electronic
2 dockets, but it looks like you have.

3 THE COURT: OK.

4 Just let me make sure. Did I leave the next case
5 management conference on for March 12? Is that date still on?

6 MS. PFEIFFER: I think it's July 10 now.

7 THE COURT: Not the final conference, but the original
8 number -- there was a conference close to the end of discovery
9 which was set for March 12. I don't have your copy in front of
10 me.

11 MS. PFEIFFER: What we set down was the next case
12 management conference on July 10.

13 THE COURT: July 10?

14 MS. PFEIFFER: Yes.

15 THE COURT: OK.

16 MS. PFEIFFER: I am having trouble reading it on the
17 docket.

18 THE COURT: OK. I will set it down for that date. If
19 it is an earlier date, that's fine. Why don't I suggest that
20 you go ahead and move forward with discovery. If there are
21 issues, bring them to my attention by letter. If you want the
22 assistance of the magistrate judge for possible settlement
23 discussions, let me know. Otherwise, what's the date that you
24 anticipate discovery would be closed?

25 MS. PFEIFFER: To be finished?

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1 THE COURT: Yes.

2 MS. PFEIFFER: Let's see. The final pretrial is
3 October 9.

4 THE COURT: OK.

5 MS. PFEIFFER: With dispositive motions done by the
6 14th, to be filed on the 14th of August.

7 THE COURT: I will leave the July date on. Move
8 forward. If I don't hear from you, I will just assume that
9 discovery is moving efficiently to close out on that schedule.

10 If we don't need to have the conference, let me know
11 that you are going to file the motions. Give me a letter to
12 that effect and tell me what the entire motion schedule is
13 going to be, when it will be fully submitted. If you want to
14 be heard, I will put it down after it's fully submitted.

15 Is there anything else we need address today? I
16 didn't want to hold you up any longer.

17 MS. HOFFMAN: Just one issue. My client understands
18 now that the project that's at issue in this case is
19 proceeding. We would like to move for a preliminary injunction
20 pending the resolution of the case.

21 THE COURT: All right. Both sides should talk and
22 figure out what the status is and whether or not it is
23 appropriate to move for that. If you want to move for that,
24 then just lay it out to me and I'll consider it. At this point
25 I don't really know enough about what's happening to know

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1 whether or not that is appropriate. Why don't you discuss that
2 and see if you want to do that. If you want to do that, then
3 I'll entertain it when you are in a position to give me the
4 facts to consider it.

5 MS. PFEIFFER: Your Honor, if I may make two comments?

6 THE COURT: Sure.

7 MS. PFEIFFER: One, Ms. Hoffman's' motion, not only is
8 it greatly late, since the termination of her client took place
9 in March -- the complaint was filed in August and it is now
10 Thanksgiving -- but, as she is well aware, the only two images
11 produced by her client that were ever used by our client are no
12 longer on the Battery's website. We've ceased doing that.
13 There is no conduct that involves anything that Ms. Broughel
14 has done that can be enjoined. So we would think that a motion
15 would be ill advised. We will, of course, discuss that with
16 her. But we wish to bring that to your attention.

17 THE COURT: OK.

18 MS. PFEIFFER: Secondly -- I'm sorry.

19 THE COURT: Go ahead.

20 MS. PFEIFFER: We have yet to receive a proper 26(a)
21 statement from the plaintiffs. The one that we received
22 yesterday, which was due last week, was not signed and contains
23 no computation of damages. So we would like to ask the
24 plaintiff to send us a proper 26(a) statement promptly, if that
25 would be agreeable.

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1 THE COURT: All right.

2 MS. HOFFMAN: We fully intended to comply with the
3 rules. I might add we have also not received a 26(a) statement
4 which I understood was sent to us by mail. We sent ours via
5 e-mail twice. We have no intent to not do it.

6 THE COURT: Discuss these issues. As I tell people
7 all the time, I am not the interpreter or translator for
8 lawyers. The things you want to ask each other, don't ask me,
9 ask each other first. Bring it to my attention if the other
10 side refuses. Then you can lay it out for me as an issue, and
11 I will issue the appropriate order depending on whether or not
12 it's a valid or invalid refusal to comply or respond to a
13 request.

14 Why don't you see if you can work those issues out.
15 If you can't, just give me a letter and I will address it right
16 away so you can move forward.

17 MS. PFEIFFER: Thank you, your Honor.

18 MS. HOFFMAN: Thank you very much. Have a good
19 holiday.

20 THE COURT: You, too.

21 (Adjourned)
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